

Court No. - 80

Case :- CRIMINAL REVISION No. - 5013 of 2023

Revisionist :- X Juvenile

Opposite Party :- State Of U.P. And Another

Counsel for Revisionist :- Dharmendra Pratap Singh

Counsel for Opposite Party :- G.A.,Murtuza Ali

Hon'ble Subhash Chandra Sharma,J.

Heard learned counsel for the revisionist as well as learned counsel for the opposite party alongwith learned A.G.A. for the State and perused the record.

The present criminal revision has been preferred by the revisionist through his father under Section 102 of the Juvenile Justice (Care and Protection) Act-2015 (hereinafter referred to as "J.J. Act, 2015) to allow the present revision and set aside the impugned judgment and order dated 01.09.2023 passed by Additional Sessions Judge/Special Judge E.C. Act, Prayagraj whereby the application no.87Kha filed by the revisionist was rejected in Session Trial No.885 of 1999 (State vs. Jainuddin and others).

Facts in brief are that F.I.R. was lodged as Crime No.71/1999 under Sections 147, 148, 149, 302, 307, 504 I.P.C. against the revisionist and other co-accused persons and after investigation charge sheet was filed. During the course of trial an application was moved by the revisionist before the learned court of Additional Sessions Judge/Special Judge E.C. Act as paper no.87Kha with affidavit to declare him juvenile and to refer the matter to the learned J.J. Board. The claim was made on the basis of date of birth as recorded in academic record that was 01.01.1983 and school leaving certificate from Sardar Vallabhbhai Patel Primary School Sansariya Shivgarh, Pratapgarh according to which he was aged about 16 years 1 months and 16 days at the time of alleged incident. The learned court concerned summoned the record from the school concerned and also examined the Headmaster of the school and the scholar register. After considering the academic record it was found to be doubtful as a result the application filed by the revisionist was rejected by order dated 01.09.2023. Being aggrieved with the order present revision has been preferred before this Court.

It is submitted by learned counsel for the revisionist that he studied up to Class 5 in Sardar Vallabhbhai Patel Primary School Sansariya Shivgarh, Pratapgarh and his date of birth was recorded as 01.01.1983. The scholar register was produced with school leaving certificate before the learned court and also the Headmaster was examined who proved the entries in the scholar register regarding date of birth but it was not relied by the learned court and it was held to be doubtful on the basis of

serial number which was entered as 57/2 and also on the ground that there was no any source of date of birth entered in the school leaving certificate and scholar register which shows that the revisionist did not attend the school in Class Ist and IInd. It is also submitted that no order for ossification test was made by the learned court concerned to determine the claim of juvenility of the revisionist. In this way the order passed by learned court concerned cannot be said to be in conformity with law but it is illegal and inappropriate which cannot sustain in the eyes of law and is liable to be set aside and this revision is to be allowed. He has relied his arguments on the case decided by the Hon'ble Supreme Court in the case of **Vinod Katara vs State of U.P. 2022 Live Law (SC) 757 para 49** which is as under :-

"Ideally, there should not be any dispute as to the age of a person if the birth is registered in accordance with law and date of birth is entered in the school records on the basis of genuine record of birth. However, in India, the factors like poverty, illiteracy, ignorance, indifference and inadequacy of the system often lead to there being no documentary proof of a person's age. Therefore, in those cases where the plea of juvenility is raised at a belated stage, often certain medical tests are resorted to forage determination in absence of the documents enumerated in Section 94 of the Act 2015. The rule allowing plea of juvenility to be raised at a considerably belated stage has its rationale in the contemporary child rights jurisprudence which requires the stakeholders to act in the best interest of the child."

Learned counsel for the opposite party as well as learned A.G.A. opposed the prayer as aforesaid and contended that in this case the incident took place in the year 1999 and trial was going on before the learned court of Additional Sessions Judge/Special Judge, E.C. Act. The claim of juvenility was made by the revisionist before the learned trial court on the basis of school leaving certificate in which date of birth of the revisionist was entered as 01.01.1983 that was issued from the school Sardar Vallabhbhai Patel, District Partapgarh. For verifying this fact Headmaster of the school was summoned by the learned court and was examined who stated that as per scholar register serial number 57/2 was related to the present revisionist whose date of birth was recorded as 01.01.1983. He has filed self attested copy of scholar register which was shown as Ex Ka-1. The cross-examination of the witness was made by learned A.D.G.C. and again the court summoned the witness on 17.08.2023 for clarifying some facts. The witness made statement on the queries asked by court that in scholar register the certificate number is not entered in fraction as 57/2 and at serial number 57/1 name of some other person was entered. It is also stated by the witness that the revisionist studied from Class IIIrd to Class Vth in his school but he was not known to the fact as to where he attended Class Ist to Class IInd. This fact was also not mentioned either in the scholar register or in the school leaving certificate as a result the document produced by the revisionist and entry made therein were found to be doubtful and not relied on. It is further contended that the law as laid down by the Hon'ble Supreme Court in the aforesaid

case is not related to such type of cryptic documents but is related to the date of birth which was got entered by the parents being illiterate and birth certificate was held not to be necessary. It is also contended that now the revisionist is aged about 40 years, therefore, ossification test is also immaterial and it cannot be taken recourse of for determination of age as per the law as settled by the Hon'ble Supreme Court in case of ***Mukarrab Etc. vs. State of U.P. 2016 Supreme (SC) 949.***

Considering the facts and circumstances of the case, submissions made by learned counsel for the parties as well as learned A.G.A. and perusal of record, it appears that in this case the incident took place in the year 1999 and during the course of trial claim of juvenility was made by the revisionist before the learned trial court on the basis of date of birth as entered in academic record relating to Class-Vth in which his date of birth was entered as 01.01.1983. The Headmaster of the concerned school was examined with the record of the school from where admission of the revisionist was related. The copy of scholar register was filed in which the name of revisionist was entered at serial number 57/2 which was in fraction whereas statement of the Headmaster shows that the name of the student is not entered in fraction in the scholar register. It was also found that no any document relating to the age of the revisionist was filed at the time of admission. He studied from Class- IIIrd to Class Vth in that school but there was no any detail regarding study as made in Class-Ist & IInd. This was also not got mentioned either in the school leaving certificate or in the scholar register that was the reason learned court concerned did not accept the claim of juvenility of the revisionist to be genuine but discarded the documents on the ground of genuineness. In this way, there appears no any illegality or impropriety in the order passed by learned court concerned. So far as the submission of learned counsel for the revisionist related to ossification test is concerned, it cannot be taken recourse of at this stage where the revisionist has become about 40 years and it will not yield accurate and precise conclusion as a result there appears no ground to make any interference in the order passed by learned trial court but this criminal revision being devoid of merit is liable to be dismissed.

Accordingly, this criminal revision is, hereby, ***dismissed.***

Order Date :- 9.11.2023

Ashok Gupta